

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Petition of Franklin W. Olin College of Engineering)	D.T.E. 01-95
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**INITIAL BRIEF OF
WELLESLEY MUNICIPAL LIGHT PLANT**

Intervenor, the Wellesley Municipal Light Plant (“WMLP”), hereby files its Initial Brief in this proceeding. WMLP respectfully requests that the Department of Telecommunications and Energy (“Department” or “DTE”) determine that the property for which Franklin W. Olin College of Engineering (“Olin College”) seeks electric service in this proceeding is located within WMLP’s exclusive service territory. In the alternative, WMLP requests that the Department determines that at a minimum, Olin College has a right to choose its electric service provider.

STATEMENT OF THE CASE

WMLP believes that despite the extensive, detailed and at times complex record in this proceeding the Department is faced with a relatively straight-forward decision. Simply stated, the issue before the Department is whether Lot 2, which was formerly part of the Babson College campus and which is located in Needham, Massachusetts and which now comprises the portion of the Olin College campus for which Olin College seeks electric service from WMLP, is located within the service territory of WMLP. If it is, then NSTAR Gas and Electric Company (“NSTAR”) has no legal right to serve WMLP’s customer. If it is not, then the Department needs to determine, whether under existing Department precedent, Olin College may choose which supplier, WMLP or NSTAR, will provide electric service to Lot 2.

There is substantial evidence in the record in this case which supports, and WMLP would respectfully suggest mandates, that the Department rule that Lot 2 is in WMLP's exclusive service territory. The facts are clear and unchallenged. For decades, through its service to Babson College, WMLP has been the sole, exclusive supplier of electricity to the portion of the Babson College campus which now is Lot 2. NSTAR has never provided electric service to Lot 2. Moreover, NSTAR's claim that its extremely limited, century old and outdated contractual arrangements with Needham somehow transform the relatively meager electric service obligations set forth in those agreements into an exclusive right to provide electric serve to all of Needham, including Lot 2 that it has never served and that historically has been served by WMLP, is little more than a desperate attempt to expropriate a portion of WMLP's service territory.

WMLP will demonstrate that a Department ruling that Lot 2 is in WMLP's service territory is entirely consistent with the provisions of G.L. c. 164, §1B(a) and with the Department's most recent precedent interpreting that statute. This is a simple case of applying the clear language of G.L. c. 164, §1B(a) to the relevant facts. There is no need for the Department to break new ground or to develop new precedent in ruling in favor of WMLP in this proceeding.

Even if the Department does not conclude that Lot 2 is located in WMLP's exclusive service territory, WMLP is of the strong opinion that there is substantial record evidence that Olin College may choose which utility, WMLP or NSTAR, will provide electric service to Lot 2. The record clearly demonstrates that Olin College's selection of WMLP provides Olin College with greater reliability at significantly less cost, both in terms of interconnection and distribution system construction operation and maintenance costs and electric rate level, than does taking service from NSTAR. When all of the relevant criteria are taken into consideration, Olin College's decision to take service from WMLP not

only is consistent with Department precedent but also makes the most economic and practical sense.

WMLP will discuss all of the relevant issues raised in this proceeding in more detail in the body of this Initial Brief. However, WMLP strongly believes that the narrowness of the issue to be decided in this proceeding must not be lost in the myriad details that were presented at the hearing. The fact is that WMLP for decades has been the sole provider of electricity to Lot 2, that under existing Department precedent and G.L. c. 164, §1B(a) Lot 2 is part of WMLP's service territory, and that to the extent there is any question as to the scope of WMLP's legal authority to serve Lot 2, Olin College has elected to take service from WMLP and that such election is entirely consistent with accepted Department precedent.

STATEMENT OF FACTS

The Olin College property for which Olin College is requesting WMLP to provide electric service is located on what was formerly part of the property owned by Babson College. The property for which Olin College has requested service from WMLP and which is the property in question in this proceeding is designated as Lot 2¹ on the map provided by Olin College in response to Information Request BE-1-1A.² See, Exhs. BE-1-1; BE-4-10; BE-7-1; Tr. 283-285 and 286-287. Olin College has set forth in its Petition at Paragraph 4 that the property in question in this case is the property where

¹ Since NSTAR does not have an exclusive service territory in Needham and given since NSTAR has never served Lot 2, where Olin College is constructing its buildings, and requesting service in this case, and since WMLP has served Lot 2, NSTAR attempts to confuse the record by pointing to its minimal service to other parts of the Olin College campus. However, this is Olin College's Petition and not NSTAR's. Olin College has clearly set forth in its Petition and testimony that in this case it is requesting electric service for Lot 2, where it is constructing its buildings.

² This Olin College map was never challenged or even cross-examined during this case. Meanwhile, NSTAR's map presented as Exh. BE-ARJ-4, was found to have significant flaws. For example, this NSTAR map only shows about fifty percent (50%) of the area in Lot 2 that was served by WMLP. Tr. 289. In addition, the NSTAR map sets forth the incorrect delivery and interconnection point for WMLP's service to Olin College. Tr. 290. Even Mr. Jessa testified that his map needed to be corrected. Tr. 664. However, it was never corrected. Meanwhile, Olin College's map (Exh. BE-1-1) is certified by a P.L.S. and prepared by an engineering and planning firm. There is truly no comparison between the completeness and accuracy of the Olin College and NSTAR maps. Olin College's map is much more credible than NSTAR's.

Olin College is now constructing its campus, which is unquestionably Lot 2. Lot 2 is located within the Town of Needham, Massachusetts and abuts the Town of Wellesley. Lot 2 also abuts Babson College's facilities in Needham which are served by WMLP. Babson College has deeded Lot 2 to Olin College as part of Babson College's and Olin College's joint collaborative arrangement. See, Exh. WMLP 2-7. Olin College is in the process of constructing classrooms and other facilities on Lot 2 and has requested electric service from WMLP to serve Lot 2. Olin Petition, p. 4. Tr. 283.

WMLP has provided electric service to Babson College facilities located in Wellesley and Needham for decades. For the better part of 50 years the physical interconnection to this area has been delivered to a central distribution point on the Babson College campus in Wellesley and distributed to college-owned buildings and facilities through Babson College's electric distribution system. Tr. 686, 688. As for Lot 2 in particular, WMLP provided all of the electric service for that parcel since the 1960s or early 1970. Exh. WMLP-1, p.3. The electricity was used for parking lot lights and streetlights. Id. NSTAR has never provided electric service to Lot 2. Exh. WMLP-1, pp. 3, 4; Exhs. WMLP-2-6, 2-10; Exh. OC-1, ¶2; Tr. 683. WMLP will provide electric service to Olin College for Lot 2 at the same switchgear location on the Babson College campus in Wellesley through which WMLP has served Babson College buildings in Wellesley and Needham for decades.

ARGUMENT

I. G.L. C. 164, § 1B(a) ESTABLISHES THAT LOT 2 IS IN WMLP'S EXCLUSIVE SERVICE TERRITORY.

The plain language of G.L. c. 164, §1B(a) and the Department's most recent decision interpreting its authority under this statute compel the Department to rule that the property for which Olin College seeks service pursuant to its Petition, i.e. Lot 2, is within WMLP's exclusive service

territory. G.L. c. 164, §1B(a) states in pertinent part: “[t]he [D]epartment shall define service territories for each distribution company by March 1, 1998 based on the service territories *actually* served on July 1, 1997 and *following to the extent possible municipal boundaries.*” (Emphasis Added.)

In its recent Order in Peabody Municipal Light Plant (“Peabody”), D.T.E. 98-122 (2002) the Department delineated the extent to which it would consider the role that municipal boundaries would play in its determination of service territories. See Peabody, supra, at 7. In that case the Department specifically rejected the notion that municipal boundaries definitively establish service territories. In commenting on the Legislature’s inclusion of the phrase “following to the extent possible municipal boundaries” the Department said: “By this explicit recognition of historically evolved, utility franchise patterns the Legislature restated and reinforced existing law. The obligation of the Department is to give practical meaning and force to this codification and mandate enforcing franchises as they existed on July 1, 1997.” Peabody, supra, at 6. The Department went on to state: “The Legislative mandate to the Department was ...couched in terms that accorded the agency a measure of discretion in resolving disputes where the boundaries between service territories implicated municipal boundaries. The statute [G.L. c. 164, § 1B(a)] clearly envisions circumstances where cleanly following municipal boundaries may not be possible without giving rise to anomalies...Hence it follows that the Department has discretion to depart from municipal boundaries in resolving service territory disputes, *if* facts and fairness so warrant.” Id.

As WMLP and Olin College have clearly demonstrated not only do “facts and fairness so warrant” in this case but they overwhelming favor with unequivocal and substantial evidence a finding that Lot 2 is within the service territory of WMLP. In fact, it is clear that NSTAR is the interloper on

the exclusive service territory of WMLP and not the reverse.

A. The Statutory Criteria for Defining Service Territories Requires the Department to First Consider the Property and Circumstances as They Existed on July 1, 1997.

In determining whether Lot 2 falls within NSTAR's or WMLP's exclusive service territory, G.L. c. 164, §1B(a) requires that the Department first must consider the subject property and the circumstances as they existed on July 1, 1997. In making this determination it is necessary to delineate precisely the property which is the subject matter of this proceeding. Olin College has requested electric service for what is designated as Lot 2 is set forth on Exh. BE-1-1, Attachment. This property is the location of the Olin College campus, which is presently under construction. Olin Petition, 4; Tr. 681. It does not include the several administrative buildings that are located on Great Plain Avenue in Needham and which are presently served by NSTAR. OC-1, p. 2. These existing administrative facilities are not electrically interconnected with the facilities on Lot 2 and it is Olin College's intent that these existing administrative facilities continue to receive service from NSTAR.

As of July 1, 1997 WMLP, through Babson College, was the sole, exclusive provider of 100% of the electric service used on Lot 2. WMLP-1, pp. 2-3; Tr. 678-81. As described by Mr. Joyce, WMLP has been providing electric service to Babson College for over 80 years. Exh. WMLP 1, p. 2. As Babson College expanded both in Wellesley and Needham, WMLP's service expanded to meet Babson College's needs. For the past 50 years WMLP has served Babson College through a central distribution point located on the Babson College campus in Wellesley. Exh. WMLP 1, p. 3, Tr. 678. When Babson College expanded into what is now Lot 2, WMLP provided electric service to parking lot and street lights, that were located on what is now Lot 2. Id., Tr. 686. While WMLP does not have a precise date as to when it commenced providing electric service to the parcel that is now Lot 2, it is

clear that such service has been provided since the 1960s or 1970s, which, of course, is well before the July 1, 1997 date set forth in G.L. c. 164, §1B(a). Exh. WMLP 1, p. 3.

Babson College deeded its interest in what is now designated as Lot 2 to Olin College as part of their joint collaborative arrangement. As indicated on Olin College's Petition, ¶4, Exh. OC-1, ¶2 and IR BE-1-1A, Olin College intends and is in the process of constructing several buildings on Lot 2. In fact, one of the buildings, Building C, is placed on top of the Coleman parking lot. WMLP supplied electricity to the Coleman lot when it was part of the Babson College campus. Tr. 686-687. Building D is being constructed on Map Hill Road. WMLP currently is serving and historically has served Map Hill Road when it was part of the Babson College campus. Tr. 687-688. Coleman parking lot and Map Hill Road were both located on Lot 2. Exh. WMLP-1, pp. 2, 3, 4; Exh. BE-8-8; Exh. WMLP-2, p.4; Exh. OC-1, ¶2; Exh. OC-2, pp. 6, 16, 17; Tr. 284, 286, 287, 296. Even BECO admits that WMLP power was used to serve the Coleman parking lot and Map Hill Road, which were located on Lot 2, and that Olin College is constructing and placing buildings where the Coleman parking lot and Map Hill Road were located on Lot 2. Exh. BE-ARJ-4; Exh. WMLP 3-7; Tr. 683, 686, 687, 688, 690. In addition to placing buildings directly on the Coleman parking lot and Map Hill Road, Olin College is placing other buildings on portions of Lot 2, which only WMLP has served. Id. This is shown on the map attached as an exhibit to Exh. WMLP-2-1. A copy of this map is attached to this Initial Brief as Appendix 1. Therefore, Olin College is constructing and placing its buildings on the exact pieces of land to which WMLP historically served power.

While it is clear that WMLP has provided electric service to the property that is now Lot 2 for over 30 years, it is also clear that NSTAR has never provided electric service to what is now Lot 2. Exh. WMLP-2-6; Exh. WMLP-2-10. Mr. Niro acknowledged that NSTAR has not served Lot 2.

Tr. 683.

Based on the record evidence in this proceeding the Department's answer to the first inquiry under G.L. c. 164, §1B(a) is relatively simple. WMLP, through Babson College, is the only electric utility that has provided electric service to the parcel of land that is presently before the Department in this proceeding. WMLP has been providing electric service to Babson College on its property in Wellesley and Needham for approximately 80 years and has been providing electric service to the parcel in question, Lot 2, on a continuous basis for over 30 years. NSTAR has never provided service to Lot 2. Hence, as of July 1, 1997, Lot 2 was actually being served by WMLP. The parcel of property that is known as Lot 2 always has been and still is part of WMLP's service territory. The record certainly contains substantial and even uncontroverted evidence to support these facts. Costello v. Department of Public Utilities, 391 Mass. 527, 539-540 (1984).

Moreover, the plain language of G.L. c.164, §1B(a) compels the Department to find that Lot 2 is within WMLP's service territory and not NSTAR's. It is well settled that when the statutory language is plain and unambiguous, it must be followed. See, e.g., White v. City of Boston, 428 Mass. 250, 253 (1998); Santiago v. Commonwealth, 427 Mass. 298, 302 (1998); Plymouth v. Civil Serv. Comm., 426 Mass. 1, 5-6 (1997). "It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, ... the sole function of the courts is to enforce it according to its terms." See Bynes v. School Comm. of Boston, 411 Mass. 264, 267 (1991); Massachusetts Community College Council v. Labor Relations Comm., 402 Mass. 352, 354, (1988), quoting James J. Welch & Co. v. Deputy Comm'r of Capital Planning & Operations, 387 Mass. 662, 667 (1982).

It is another elementary rule of statutory construction that a statute should not be read in such a way as to render its terms meaningless or superfluous. Bynes v. School Comm. of Boston, 411 Mass. at 268; Globe Newspaper Co. v. Commissioner of Revenue, 410 Mass. 188, 192 (1991); International Org. of Masters, Mates & Pilots v. Woods Hole, Martha's Vineyard & Nantucket S.S. Auth., 392 Mass. 811, 813 (1984). Accordingly, the Department must consider the circumstances as they existed on July 1, 1997 in interpreting G.L. c. 164, §1B(a) and ruling that Lot 2 is in WMLP's service territory.

WMLP notes that the character of the service on Lot 2 has changed in the past few years from outdoor lighting and some building lighting to what will be a new college campus. However, that fact in no way changes the outcome of the Department's determination under G.L. c. 164, §1B(a). There is nothing in that statute that pertains to changes in use, volume or ownership of property as the basis for making a decision as to the extent of a utility's service territory. All that the Department must determine is which utility "actually" was serving the electric needs of the area on July 1, 1997. Clearly, in the case of Lot 2, this was WMLP.

This is the essential question to be resolved under G.L. c. 164, §1B(a) and there really is nothing more that the Department need decide in this case. WMLP actually was providing service to Lot 2 as of July 1, 1997. As such it has the exclusive right and obligation to serve customers on that parcel. Absent consent from WMLP, NSTAR has no right to serve any customer within WMLP's service territory. See, G.L. c. 164 §1B(a). WMLP has not given any such consent.

B. In Determining the Extent of a Utility's Service Territory the Department is Not Limited by Municipal Boundaries.

Having acknowledged that it has never provided electric service to Lot 2, NSTAR can make no claim that it was “actually” providing electric service to Lot 2 as of July 1, 1997. Hence, it cannot satisfy the basic, fundamental requirement established by G.L. c. 164, §1B(a) to claim Lot 2 as part of its service territory. Apparently undeterred by its inability to satisfy the essential statutory requirement for establishing a service territory, NSTAR tries an end-run around the clear and unequivocal statutory language, which, of course, mandates a finding that, Lot 2 is in WMLP's service territory.

Relying on a set of 100-year-old agreements with the Town of Needham, NSTAR makes the rather remarkable claim that the severely limited permissions granted in those agreements constitute an inviolable, exclusive franchise right to serve the entire Town of Needham, apparently for all time.³ Exh. BE-JJN-1. The flimsiness of NSTAR's position was exposed in the cross-examination of Mr. Niro. See, Tr. 547-569.

In that cross examination Mr. Niro acknowledged that one contract, dated 1903, between the Town of Needham and the Greendale Chemical and Electric Lighting Company had a term of five years and was confined to providing service for streetlights and lighting of public buildings. Tr. 547, 550-552. A second contract, dated February 20, 1908, was between Needham and Edison Electric Illuminating Company and pertained to services for the Town Hall and Library. No other properties in the Town were covered. Tr. 552, 560. A third contract, also dated

³ Taken to its logical conclusion, NSTAR's argument would render meaningless the provisions of G.L. c164, §1B(a) that authorize the exclusive service territory so long as allowed by statute. NSTAR's position would mean that regardless of what the Legislature may decide in the future regarding service territories, NSTAR's service in Needham would be immune from such legislation. Accordingly, NSTAR's position must fail. See Flanagan v. Contributory Retirement Appeal Board, 51 Mass.App.Ct. 862, 868 (2001) (“The construction of a statute which leads to a determination that a piece of legislation is ineffective will not be adopted if the statutory language is fairly susceptible to lead to a construction that would lead to a logical and sensible result.”).

February 20, 1908, conveyed certain poles used for lighting the town square to the Edison Electric Illuminating Company. Again, there is no reference in the contract to granting any additional rights to provide electricity in the Town of Needham. Tr. pp. 561-562, 564-565. Finally, there is a fourth contract dated February 25, 1908, which allowed Edison Electric Illuminating to provide lighting for public places and street lighting. The term of this agreement was for 20 years.⁴ Tr. pp. 565-569. Nothing in these agreements mentions the provision of electric service to any property remotely related to what is now Lot 2. Tr. 569.

While these contracts may provide an interesting historical record of how NSTAR's predecessor companies came to provide electric service in parts of Needham, they do not and, given the specific service limitations set forth in each agreement, cannot be used to establish that NSTAR has an exclusive franchise to serve every parcel of property within the Town of Needham. In fact, NSTAR has no such exclusive agreement with the Town of Needham. Tr. 570. While, it may be true that through the operation of the street crossing permit provisions of G.L. c. 164 and other relevant provisions of that statute that investor owned utilities were able to cobble together the right to serve a particular municipality, prior to the enactment of G.L. c. 164, §1B(a), Massachusetts has never recognized exclusive utility franchises. In fact, if all that were necessary to establish an exclusive electric franchise within any municipality was any agreement to provide electric service to any part of the community or the right to cross certain public ways, which is apparently all that NSTAR has in the Town of Needham, there would have been no need for the Legislature to have enacted G.L. c. 164, §1B(a).⁵

⁴ No other contracts between Town of Needham and NSTAR's predecessors were presented nor did Mr. Niro, NSTAR's witness, know of any additional contracts. Tr. pp 569-570.

⁵ WMLP does not need to cross any public ways in Needham to provide power to Olin College for Lot 2. Exh. BE-8-6.

WMLP believes that NSTAR is trying to make too much out of too little. It is trying to bootstrap a series of nearly century old, very limited electric service agreements, some of which by their own terms expired decades ago, into an exclusive and apparently eternal electric utility franchise. This is contrary to a fair reading of the contracts themselves, flies in the face of how the electric utility industry developed in the Commonwealth during the 20th Century and renders G.L. c. 164, §1B(a) superfluous. These contracts clearly cannot be the basis on which the Department should make any determination regarding the scope of NSTAR's authority to serve Lot 2. Finally, in connection with NSTAR's claim that it has an exclusive franchise to serve all of Needham, the fact is that NSTAR does not now and has not in the past served all of Needham. As noted above, WMLP has provided service to Babson College on its campus in both Needham and Wellesley for nearly 80 years. And, WMLP has provided electric service to Lot 2, which was part of the Babson College campus, for over 30 years. Clearly, if NSTAR had an exclusive franchise right to serve all of Needham, it likely would have taken appropriate steps to protect that franchise and prevent WMLP from serving in Needham. However, NSTAR never served this property, Lot 2, in Needham. NSTAR either did not have an exclusive right to serve all of Needham, which WMLP asserts is a correct interpretation of the law in Massachusetts, or it long ago has waived its right to serve this portion of Needham by allowing WMLP to serve Lot 2 for over 30 years.

Also as has been discussed in this proceeding, WMLP provides electric power to the residential customers living in Needham on Cartwright Road. In that instance, NSTAR did not want to serve these homes due to the high cost of bringing in electric service from NSTAR's nearest facility in Needham. Tr. 645-646. In 1987, the Department in Wellesley Board of Public Works, (or "WBPW") D.P.U. 86-45/D.P.U. 86-144 (1987) ordered WMLP to provide service to these Needham homes. This

decision was based in part on the proximity of WMLP's facilities to Cartwright Road, WMLP's lower costs than NSTAR's in serving the homes on Cartwright Road in Needham, conditions that are on point to what exists in regards to Olin College and on point regarding the fact that WMLP historically served customers along Cartwright Road. Id. at p. 20; Tr. 648.⁶ In WBPW, the Department has recognized that WMLP, has historically served parts of Needham. The Department specifically found that WMLP "has extended electric service beyond its territorial boundaries [in Needham] for some 70 years." Id. at 8. The Department also found that because WBPW "has historically served customers along Cartwright Road, it should be required to meet its obligations to serve all residents along that street [Cartwright Road in Needham] without discrimination." Id., at 20. The Department ruled that, "The obligation to serve a particular community requires the municipal or privately-owned public utility to plan both for existing customers' growing needs for electricity and for the demands of new customers." Id., at 18. The Department found that "a [WBPW] refusal to provide electric service . . . is unreasonable and discriminatory." Id., at 20.⁷

Since Lot 2 is within the WMLP's service territory, WMLP has the same obligation to serve Lot 2 as it did to serve Cartwright Road. Similar to the Cartwright Road area of Needham, WMLP has a historical practice of providing service to the Babson College campus, and particularly, the parcel of property (Lot 2) for which Olin College seeks electric service in its petition. Moreover, WMLP has an obligation to provide service on a non-discriminatory basis to Lot 2 because, as the Department has

⁶ See also Appendix 2 of this Initial Brief which shows that NSTAR has set forth a completely different position in serving Olin College than it did in serving the Cartwright Road homes and the MWRA in Needham when its costs of connection were higher than WMLP's. Since as the Department found in WBPW an electric utility with a franchise has an obligation to serve in a non-discriminatory manner, NSTAR's actions in picking and choosing which border customers in Needham it will serve shows that NSTAR does not have an exclusive franchise to serve all of Needham.

⁷ At the hearing, NSTAR attempted to use for the first time Mr. Berdan's testimony (Exh. BE-1) in WBPW. However, Mr. Berdan was not a witness at the hearing and was never even subpoenaed by NSTAR. Furthermore, as Mr. Joyce

ruled, WMLP also has the obligation “to plan both for existing customers’ growing needs for electricity and for the demands of new customers.” See Wellesley Board of Public Works, *supra*, at 18 (emphasis added). The fact that the Department ordered WMLP to serve the new homes on Cartwright Road in Needham even though WMLP did not want to serve those customers strengthens WMLP’s position – that once the utility undertakes the obligation to provide service to an area, that area is within that utility’s service territory regardless of new construction or changes in ownership. Therefore, the fact that Babson College sold a portion of its campus to Olin College in no way diminishes WMLP’s right and obligation to provide electric service to the subject property.

The Wellesley Board of Pub. Works case also stands for the proposition that NSTAR does not and could not have an exclusive right to serve Lot 2. In that case, although the Department recognized that NSTAR provides electric service in Needham, obviously its right was not exclusive, otherwise, NSTAR and not WMLP would have been ordered to provide service to those properties. Again, NSTAR’s claim of an exclusive right to serve Needham is overstated.

Finally, the language in G. L. c. 164, §1B(a) makes clear that the Legislature knew that private electric companies did not have exclusive service franchises. See Investigation by the Department of Public Utilities Commencing a Notice of Inquiry/Rulemaking establishing the procedures to be followed in Electric Industry Restructuring by Electric Companies, D.P.U. 96-100 at p.34 (1996); Investigation by the Department of Public Utilities Into Electric Industry Restructuring, D.P.U. 95-30 at B.9 (1995), wherein the Department set forth that Massachusetts investor owned electric utilities failed to prove the existence of exclusive franchises and any private electric company assertion to an exclusive service territory was uncertain at best. The first sentence of G.L. c. 164, §1B(a) would not have been

testified, he disagreed with Mr. Berdan’s testimony and apparently the Department did, also, since they ruled against

necessary if such exclusive franchises existed. However, since no such private electric company exclusive franchises existed, the Legislature authorized the Department to establish them. The Legislature correctly recognized that a utility's right to serve a particular territory would not in all instances follow established municipal boundaries. Hence the Legislature suggested that the Department define service territories "to the extent possible" following municipal boundaries. Clearly, the Legislature did not intend to expand or contract a particular utility's service territory by mandating the following of municipal boundaries. Instead, it offered the Department the opportunity to consider a variety of circumstances when defining service territories.⁸.

In the Department's recent Order in Peabody Municipal Light Plant ("Peabody"), D.T.E. 98-122 (2002), the Department specifically rejected the notion that municipal boundaries definitively establish service territories. There, the Department stated, "[t]he statute [G.L. c. 164, § 1B(a)] clearly envisions circumstances where cleanly following municipal boundaries may not be possible without giving rise to anomalies...Hence it follows that the Department has discretion to depart from municipal boundaries in resolving service territory disputes, *if* facts and fairness so warrant." See Peabody, *supra*, at 7.

The Department is correct in its interpretation of this provision of §1B(a). There is no alternative interpretation with any merit and therefore, the principles established in the Peabody case should be followed. See Town of Hingham v. Department of Telecommunications

it.

⁸ It is important to note that the Department defines service territories based on territories, not customers, actually served on July 1, 1997. Customers are by nature transitory while territory, i.e. property, does not move. Hence, the fact that Babson College sold property to Olin College or that the Coleman Parking lot or Map Hill Drive moved does not have any impact on the Department's decision regarding the scope of WMLP's service territory, since WMLP was the electric service provider to the very property in Lot 2 on which Olin College is constructing its buildings on, before and after July 1, 1997. This land certainly did not move.

and Energy, 433 Mass. 198, 204, 213 (2001). There are instances, such as the one presented in this proceeding, where for any number of historic reasons, one utility's service territory, in this case WMLP's, has crossed over a municipal boundary. It was the apparent intent of the Legislature that the 1997 Restructuring Act not negate these established service territories by imposing an artificial dividing line of municipal boundaries.⁹ Therefore, the suggestion to look at municipal boundaries in establishing service territories was not mandatory but merely hortatory. It was something for the Department to consider but it was not to replace or supercede the primary criteria of G.L. c. 164, §1B(a), i.e. defining a service territory based on actual service.

II. THE CONCERNS ADDRESSED IN THE PEABODY CASE DO NOT APPLY IN THIS PROCEEDING.

During the course of this proceeding the Department issued its order in the Peabody case. Given the nature of that case it was natural that the Parties to this proceeding and the Department would look to the Department's decision in Peabody for guidance on how to resolve the issues in this case. Even though the Peabody decision supports Olin College's Petition and request for service from WMLP, a careful reading of the Peabody decision reveals, however, that the circumstances reviewed by the Department in Peabody are not required even to be present to find in WMLP's favor.

In Peabody the Department was faced with having to determine which of two competing utilities, Massachusetts Electric Company ("MECO") or Peabody Municipal Light Plant ("PMLP"), would be allowed to provide electric service to a Stop and Shop supermarket that was

⁹ Under NSTAR's interpretation that G.L. c. 164 §1B(a) requires strict adherence to municipal boundaries, NSTAR should discontinue its service to the portion of Suffolk Downs that is in Revere, which is in the historic service territory of MECO. That, of course, is not a correct result under G.L. c. 164 §1B(a) anymore than it is correct to order WMLP to discontinue its existing service to Lot 2.

constructed on a parcel of land that straddled the town boundaries between Salem and Peabody and which boundaries constituted the boundaries between the service territories of MECO and PMLP. The parcel on which the supermarket was constructed had been created in 1995 when two parcels, one in Salem and one in Peabody, were combined to form the single parcel. In the Peabody case, the Department had to consider several issues having to do with service territory boundaries, border customer choice, and what the Department called “creative conveyancing.”

As discussed above, the Department rejected MECO’s claim that the municipal boundary formed its service territory boundary. This is the identical claim that NSTAR is making in this proceeding. The Department found MECO’s interpretation of G.L. c. 164, §1B(a) to be “strained and constraining.” Instead, the Department correctly concluded that the Legislature had given the Department discretion when defining service territories to take into consideration the specific circumstances of each situation. Peabody, supra, at 7.

Unlike the parcel in Peabody, which was formed out of two parcels in two separate service territories prior to the enactment of G.L. c. 164, §1B(a), and which resulted in the creation of a single parcel that straddled two separate electric service territories, the parcel in question in this proceeding, Lot 2, was a single parcel prior to and after July 1, 1997. It was not until 2000 that Babson College conveyed Lot 2 to Olin College. See, Exh. BE-1-4, Attachment. Therefore, the issue of combining properties to get around or defeat the central intent of G.L. c. 164, §1B(a), which was a concern in Peabody, simply does not exist in connection with Lot 2. Here the conveyance was not a merger of lots but a division of lots. Here, unlike Peabody, prior to and after July 1, 1997 the single lot that was divided to create Lot 2 was part of the service territory of a single utility, WMLP. Babson College could have expanded its campus onto Lot 2 and that Lot still would be in WMLP’s service territory. In

fact, Babson College and Olin College plan to jointly own a building on Lot 2. Exh. WMLP-2, p. 4. Therefore, this is but another reason why the conveyancing here is irrelevant to this case and certainly does not come within the “creative conveyancing” concern set forth in Peabody. In contrast, NSTAR has never provided service to any portion of what is Lot 2. Tr. 683.

Further, there is nothing in the Peabody decision that leads to a conclusion that Babson College’s sale of Lot 2 to Olin College in some way transferred that lot out of WMLP’s exclusive service territory and into NSTAR’s service territory.¹⁰

Finally, WMLP feels the need to address the “creative conveyancing” concerns raised by the Department in this case. As stated above the conveyance of Lot 2 from Babson College to Olin College in 2000 cannot be considered a “creative conveyance” as that term was used in Peabody. There was no merger of property to evade the effect of G.L. c. 164, §1B(a). In this case there was a division of property. Importantly, the property in question here, Lot 2, received its electric service both before and after July 1, 1997, from WMLP. NSTAR made no claim to serve any portion of what is now Lot 2, until well after July 1, 1997, when Olin College decided to construct several buildings on Lot 2.

There was, however, an additional concern expressed by NSTAR and reflected in the examination of witnesses by the Department that Olin College may have engaged in a “creative conveyance” in connection with the purchase of approximately 1000 square feet of property in Wellesley. As will be discussed below, the record in this proceeding is clear that the purchase of that property has no impact on the electric service to Olin College and is not a conveyance of the type about which the Department cautioned in its Peabody decision.

¹⁰ If it had, WMLP could arguably assert that Babson College engaged in a “creative conveyance” to evade the clear purpose of G.L. c. 164, §1B(a). This, of course, is not what occurred, as the property in question always has been part of WMLP’s service territory.

There also is no evidence that Olin College engaged in any “creative conveyancing” in order to manipulate boundary lines or service territories. In fact, although Olin College purchased a small piece of property in Wellesley, that parcel is completely unrelated to how Lot 2 will receive electric service from WMLP. Exh. OC-2, pp. 8, 9; Exh. BE-8-3; BE-1-5; supplemental, and BE 1-38, supplemental. As described in some detail in this proceeding, Olin College will have an interconnection with the WMLP at a switchgear which is in the same location as the Babson College switchgear which is on a portion of Babson College’s campus in Wellesley just off of Forest Street and which has been used by WMLP to serve Babson College for decades. Exh. OC-2, pp.8-9. This is **not** the small parcel of property purchased by Olin College. As Mr. Hannabury testified:

Olin-owned lines would proceed approximately 2,200 feet from the switchgear to Olin’s permanent distribution loop circling Olin’s new buildings just over the Town line. Olin would own property interest in the land on which its switchgear rests and on the route that Olin’s conduit and lines will traverse. WMLP lines will connect directly to the switchgear. This alternative yields additional savings as follows: common manholes with Babson, lesser costs for installing conduit since it will be a more direct route and the conduit duct bank can be shared with Babson, and lower on-going maintenance costs since all switchgear for both campuses will be in a single location.

OC-2, pp. 8-9. Clearly, this is not a “creative conveyance.”

The determination to serve Olin College through this switchgear location is based on the numerous advantages provided to Olin College from this electrical configuration. As Mr. Joyce testified:

The primary benefit to both Olin and the WMLP is that the WMLP’s distribution infrastructure is already in place. A second major advantage is that the Babson Campus is currently served from two separate substations, each capable of servicing the entire campus during a single order contingency. A third advantage is that the primary supply is a dedicated underground cable supply that feeds only Babson, which eliminates exposure to problems inherent with supplies fed from overhead pole lines, such as vehicular accidents and weather conditions (i.e. hurricanes, ice storms, etc.)

Reliability of supply is greatly enhanced because those two supplies come from completely different substations; one from the Wellesley Hills Substation and the backup from the Cedar Street Substation. Upon the occurrence of any type of major

substation problem in the Wellesley Hills Substation, both the Babson and Olin campuses will switch to a separate substation.

Exh. WMLP-1, p. 7.

In addition, Mr. Joyce testified to the significant operational benefits from serving Olin College from this central switchgear location.¹¹ He said:

It is my understanding that under the Olin and Babson *Joint Collaborative Agreement*, Babson College will be responsible for the maintenance and operations of the electrical infrastructure. For decades Babson College and WMLP have worked very closely together and established an extremely effective working relationship in meeting all of the College's electrical needs. Babson College owns and operates its own high voltage electrical system. Babson College has a staff of highly seasoned professionals who have experience in troubleshooting and repairing system problems working hand-in-hand with WMLP. Olin would automatically receive all of the benefits that accompany this relationship since a central switchgear arrangement will streamline troubleshooting requirements in the event of system problems.

Id.

Finally, he noted several other advantages to both Olin College and Babson College as a result of using this switchgear.

In addition to the financial, operational and reliability benefits, the campus' electrical infrastructure from a single central distribution point is already in place. This central distribution point has in the past and currently services the area of Needham where Olin's buildings are now being constructed. This infrastructure includes existing service to the area in Needham where Olin's buildings are currently being constructed.

Through this central distribution point, WMLP has historically provided electrical service to the Babson College Sullivan Building and Maintenance Shed, both of which are physically located in Needham, as well as to lighting for a parking lot in Needham located adjacent to the Olin campus.

¹¹ WMLP has taken a consistent position since 1999 that the best and far superior interconnection to serve Olin College would be from this central switchgear location. Exh. BE-2-3, Exhibit 2.

Finally, it is WMLP's understanding that the Babson College Master Plan includes construction of two buildings on the Olin Campus which would be jointly owned by both Babson College and Olin College and would be fed from the central switchgear location.

Id., at 8. Since the central switchgear location is entirely separate from the small parcel of property purchased by Olin College from Babson College, there is simply no basis to conclude that that particular conveyance has anything to do with the provision of electric service to Lot 2. Even NSTAR recognizes that if no power is delivered from the small 1000 square foot parcel which is the case, then the issue of creative conveyancing in connection with that parcel no longer exists. Tr. 801.

Finally, NSTAR acknowledges that Babson College and Olin College did not enter into their joint collaborative agreement for the purpose of evading the provisions of G.L. c. 164, §1B(a) or to avoid taking electric service from NSTAR. Tr. 801-804.¹² Olin College and Babson College entered into the joint collaborative agreement not for the purpose of determining which entity would provide Olin College with electric service but instead to develop a "joint educational, research, and administrative programs in a cooperative and synergistic fashion." Exh. OC-2, pp. 2-3. The purpose of any land transfers between Babson College and Olin College was to further this end.

III. TO THE EXTENT THE DEPARTMENT FINDS THAT THIS IS A CUSTOMER CHOICE CASE, OLIN COLLEGE'S SELECTION OF WMLP AS ITS SERVICE PROVIDER IS CONSISTENT WITH DEPARTMENT PRECEDENTS

WMLP strongly contends that this case is not a customer choice case but is a case about the exclusivity of its service territory under G.L. c. 164, §1B(a). However, to the extent the Department concludes that Lot 2 is not part of the exclusive service territory of WMLP, then WMLP submits that

Olin College is a border customer, which has the right to choose its electric supplier and that Olin College has selected WMLP to be that supplier.

Lot 2 is a parcel that abuts the municipal boundary of Needham and Wellesley.¹³ As noted above, NSTAR has no history of serving this property and its only basis for claiming a right to serve Lot 2 are the same “strained and constraining” interpretation of G.L. c. 164, §1B(a) offered by MECO in Peabody and its manufactured and totally incorrect argument that it has some contractual arrangement with Needham which grants it an exclusive franchise to serve all of Needham. In light of the total lack of credible legal authority, for NSTAR to claim that it has an exclusive right to serve Lot 2, WMLP submits that Olin College is entitled to choose its electric supplier.

In Ecological Fibers, Inc., D.P.U. 85-71 (1985), the Department advanced the following factors to consider in resolving service territory disputes: 1) customer’s preference; (2) location of the facilities; and (3) interconnection costs and rates of the competing utilities.¹⁴ Permitting the WMLP to provide service to the subject property satisfies all three of these factors. Olin College has clearly and unequivocally set forth that it wants WMLP as the service provider.

¹² As noted throughout, no evasion of §1B(a) is possible, as the parcel now known as Lot 2 was within WMLP’s service territory prior to July 1, 1997 and remains there today.

¹³ On or before the key legislative date of July 1, 1997, Lot 2 was part of a larger parcel of land that straddled the Wellesley-Needham border. Thus, this was a true border property. Even under NSTAR’s reasoning as set forth in Mr. Niro’s testimony, Exh. BE-JJN-1, pp. 18, 19, WMLP would be able to serve such a border property. Furthermore, since Olin College and Babson College are planning to construct and jointly own buildings in Wellesley and Needham, this would make Olin College, like Babson College, a straddling customer. Exh. OC-2, p. 2; Exh. WMLP-2, p. 4; Exh. BE-1-1, attachment 1(d), supplemental; Exh. BE-1-21. NSTAR has testified that it would not object to WMLP serving such a straddling customer. Tr. 632, 633, 637, 693-697. While WMLP should be able to serve Lot 2 because it is part of its service territory, the fact that on the key legislative date Lot 2 was a true border property and that Olin College and Babson College are going to construct jointly owned buildings in Wellesley and Needham, making them straddling, border customers, are but additional reasons why the Department should decide that WMLP should serve Olin College’s facilities on Lot 2.

¹⁴ These are the same factors that the Department considered in Cartwright Road when it ruled that WMLP had the obligation to serve those customers located in Needham. These are the same factors that NSTAR used in stating that WMLP and not NSTAR should serve the MWRA. Exh. WMLP-2, pp. 2, 3, 5; Exh. BE-JJN-2, p. 6. NSTAR’s picking and choosing of what border customers in Needham it will serve or not serve is set forth in Appendix 2 attached to this Initial Brief.

Moreover, the location and costs of WMLP's facilities to serve Lot 2 provide significant economic, overall efficiency and reliability of service advantages to Olin College when compared to the service NSTAR would provide. Finally, WMLP's rates are approximately 35% lower than those offered by NSTAR.

A. Olin College Prefers to have Electric Service Provided by WMLP.

It goes without saying that Olin College wants its electric service to be provided by WMLP. This is the basis for its Petition to the Department. Olin College has requested service from WMLP. As will be discussed in the following section, the basis for Olin College's preference of WMLP, to the extent it is relevant to the Department's determination, is sound from an economic, operational and reliability perspective. Clearly, Olin College has chosen the least cost, reliable service available to it.

B. The Location of the WMLP's Facilities and Low Interconnection Costs Make the WMLP the Preferred Supplier.

The location of the switchgear facilities and the relatively low interconnection costs strongly favor WMLP as the service provider. As discussed above, WMLP will provide electric service to both Babson College and Olin College through a central switchgear configuration to be located on the Babson College campus. Exh. OC-2, pp. 8-9; WMLP-1, p. 7. In order to connect the Olin College switchgear to the WMLP's distribution infrastructure 200 feet of cable from WMLP manhole #24-1 to Olin College's switchgear at the central distribution point will be required. WMLP estimates the installation of this cable and the connection of Olin College's switchgear to the automatic transfer switch will cost \$18,000. WMLP-2, p. 3. Moreover, WMLP would serve Olin College with the same infrastructure that presently serves Babson College, a normal 13.8 kV underground supply and a back-up 13.8 kV underground/overhead supply, both of which tie to an automatic transfer switch owned by

Babson College. Exh. BE-2-22; See, Exh. BE-2-30, 2-32, 4-11 and 8-8.

This compares to a cost estimate for an interconnection from NSTAR that ranges \$612,000 to \$1,600,000, with a $\pm 20\%$ variation, depending upon the level of reliability Olin College is willing to endure. Exh. BE-ARJ-1, pp. 10-13. For example, a dedicated underground service from NSTAR, which is equivalent to what already is available from WMLP (Tr. 873) and which is the level of service sufficient to meet Olin College's requirements, Exh. OC-1, pp. 3-4, would cost \$1.6 million, $\pm .20\%$.¹⁵ NSTAR's estimates only get the connection to the boundaries of Lot 2. Olin College will incur additional costs to connect from this point to its buildings and facilities.

Because Olin College's campus is approximately 4050 feet from the NSTAR distribution system, the cost for private property construction to connect the buildings on Lot 2 with the NSTAR distribution system is approximately \$600,000. This is over and above the cost for NSTAR to construct the interconnection. Because the Olin College facilities are closer to the WMLP interconnection point, the estimated cost to Olin College of the private property construction from a WMLP interconnection is approximately \$460,000. Exh. OC-1, ¶2; Exh. OC-2, pp. 6, 9, 10. Thus, assuming Olin College would receive the maximum credit from NSTAR, which Olin College believes is highly unlikely, See, Exh. OC-2, p. 12, Olin College would have total interconnection costs of \$1,140,000. This compares to a total cost of \$478,000, if it interconnects with WMLP. Therefore, Olin College's interconnection costs from NSTAR, depending on the option selected, range from \$1,262,000 (\$1,740,000 - \$478,000) to \$662,000 (\$1,140,000 - \$478,000) higher than its interconnection costs from WMLP.

C. Service from WMLP will be More Reliable than Service from NSTAR.

In addition to being less expensive, the record in this proceeding also demonstrates that service from WMLP will be more reliable than service from NSTAR. Olin College provided evidence that its experience with loads served by NSTAR on properties located on Great Plain Avenue, which are not part of Lot 2 and which will continue being served by NSTAR, has been unsatisfactory. Exh. OC-1, p. 3. Olin College believes that the level of service provided by NSTAR is totally inadequate for the demands of an engineering college. Id. As Mr. Hannabury said: “To this day, the lights in all of our buildings still flicker at all times of the day and night regardless of how much equipment is running, and we have continued to suffer additional outages. I was certainly not going to commit Olin to considerable expenditures on electric service only to have students and researchers losing their work and experiments because of inferior electric service.” Id., at 4.

In contrast the service provided by WMLP to Olin College has been highly reliable. Exh. WMLP-1, p. 8. In fact, in the past seven years of providing service to Babson College, which will have a switchgear configuration similar to that used to serve Olin College, WMLP has had no power outages. Id., See also, Exhs. BE-2-22, and BE-8-11.

In addition to the difficulties Olin College has experienced with service from NSTAR on other properties in the area, the fact that NSTAR intends to serve the Olin College load through its Station 148 poses additional problems for Olin College. The record in this case is replete with reliability problems emanating for Station 148. WMLP receives approximately one-third of its electric supply from Station 148. As Mr. Joyce testified:

The Needham Substation [Station 148] transformers were installed in the late 1950’s or early 1960’s. The voltage from these transformers is not automatically regulated. During the hot summer days BECo’s substation transformers are incapable of providing voltage within

¹⁵ There may or may not be a revenue credit of up to \$600,000 from NSTAR. Since all of Olin College’s load will not be on line in the first year of operation, the actual credit is likely to be much lower.

acceptable ANSI Standards. According to these standards, the WMLP should receive voltage at $\pm 5\%$ of 13.8 kV. The minimal acceptable level would be 13.1 kV. Since 1996 the WMLP has received voltages at 12.6 kV and below. During 2 out of the last 3 summers the voltage from Needham was so low that Wellesley College relays tripped, automatically shutting down their cogeneration facilities. Given the extremely poor 5-year record of voltage and reliability problems at Station 148 the additional load required to serve Olin College could create significant problems for Needham and Wellesley businesses and residents.

Exh. WMLP-1, at 9. See also, Exhs. WMLP-3, 4, 5 and 6, which detail a series of voltage disturbances on lines out of Station 148 and the apparent inability of NSTAR to correct these problems over a significant number of years.

Again, in contrast to the level of reliability that NSTAR would provide out of Station 148, it is important to note that WMLP will supply the Olin College load through its newly constructed underground system out of NSTAR's Station 292, which has a much better reliability record. The transformers at Station 292 are voltage regulated, with automatic throwover capacity, while the ones at Station 148 are not. Exh. WMLP-1, p. 9, Exh. BE-8-9. The power supply from Station 292 is completely underground and is located in a new WMLP-owned duct bank and manhole system. Service from Station 148 is not. Id. In addition WMLP has undertaken an extensive capital improvement program to increase system reliability. This included a project to supply a second supply of power to Babson College, which was approved prior to entering into discussions with Olin College. Exh. WMLP-1, p.6, Exh. BE-8-3. Meanwhile, NSTAR has just recently initiated corrective actions to address these problems which it knew existed as far back as July, 1998.¹⁶ Exhs. WMLP-3, 4, 5, 6.

Finally, there were some questions regarding the capacity of the electric service provided by WMLP. As Mr. Newell testified. WMLP's primary and secondary lines have a capacity of 9.5 MW, which is more than enough to service Babson College, which has a peak of approximately 4.5 MW,

and Olin College at full operation, which will have a peak of approximately 3.0 MW. WMLP's proposed service has ample capacity to serve Olin College.¹⁷ Tr. 328, 329, 334, 335, 336; Exh. WMLP-7, pp.3, 4.

Clearly, when all of the options available to Olin College are considered, the only reasonable conclusion is that service from WMLP is significantly less costly to construct and more reliable than any alternative offered by NSTAR.

D. The WMLP's Rates to Serve Olin College Are Lower than NSTAR's.

WMLP will provide service to Olin College under its *Large General Service - Primary* rate tariff. Olin College would be a customer under WMLP's Large General Service – Primary, Rate Schedule PRI-1, MA DPU# 92-5. The weighted average rate under this Tariff for fiscal year 2001 was about 7.0 cents per kWh. This rate is significantly below Boston Edison's G-3 rate under which Boston Edison would serve Olin College. Furthermore, the rate under the WMLP Tariff should decrease to approximately 6.5 cents effective on or before September 1, 2002 due to WMLP's having entered into a new long-term power supply agreement. Accordingly, Olin College would realize significant economic benefits if the Department approved the WMLP as its electric supplier. Exh. WMLP-2, p. 5.

In fact, as was demonstrated in the economic analysis prepared by Mr. Seavey of PLM, Exh. BE-1-8, OC Supplemental Response, Olin College's estimated savings for calendar year 2001 by

¹⁶ NSTAR recently was heavily fined by the DTE for substantial and numerous outages and its failure to address reliability issues in other parts of its service territory. D.T.E. 01-71A, pp. 14, 16 (2002).

¹⁷ NSTAR's underground option has a capacity of 12.5 MW. This does not mean WMLP's service option is any less reliable since WMLP's build clearly has the capacity to meet the peak load demands of the two customer on the service. Further, Babson College's new switchgear is being configured so that another line can be brought in to serve Babson College. In addition, lower line losses from the 12.5 v. 9.5 MW build is irrelevant, since losses are included in the WMLP tariff that will serve Olin College and WMLP's rate to Olin College should be about \$1 million per year lower than what NSTAR will charge Olin College.

being served by WMLP rather than by NSTAR, using Babson College's load as a proxy for Olin College's load, would have been approximately \$1.1 million, (\$2,955,064 under NSTAR's G-3 Rate - \$1,846,942 under WMLP's Primary Rate). Furthermore, as is shown in Mr. LaCapra's economic analyses for WMLP, NSTAR's rates should be thirty-five percent (35%) higher than WMLP's rates. Exh. BE-4-8.

E. It Will Be More Efficient for Olin College to Receive Electric Service From WMLP

An additional benefit of Olin College's taking electric service from WMLP at the switchgear location on the Babson College campus is that it is consistent with the joint collaboration agreement between Olin College and Babson College. Under that agreement, Babson College will be responsible for the operation and maintenance of the electric infrastructure. The fact that this infrastructure will emanate from the same location, i.e. the central switchgear will help reduce operation and maintenance costs. Also, another tangible benefit is that Babson College and WMLP have worked very closely together and have established an extremely effective and efficient relationship in meeting all of Babson College's electrical needs. By taking service from the central switchgear, Olin College will be the beneficiary of this longstanding and highly effective relationship. Exh. OC-2, pp. 8, 9; Exh. WMLP-1, pp. 7,8; Exh. BE-8-1; Exh. BE-8-3.

F. WMLP Provides More Responsive Customer Service

Although not technically a criteria under the Ecological Fibers case, the fact is that one of the reasons that Olin College prefers WMLP over NSTAR is the level of customer service Olin College receives from WMLP. As Mr. Hannabury testified:

Although I have made the decision [to select WMLP as Olin College's supplier] primarily considering cost, efficiency and reliability, BECO's lack of responsiveness and willingness to work with us as a customer cannot be ignored. Based upon all the

interactions to date, it appears that WMLP will be more responsive to our needs, more willing to work with Olin should issues arise and better able to provide the high level of service that we would expect. Moreover, this perception is apparently not unique. Attachment B, the March 22, 2002 Boston Globe article cites the J.D. Power customer satisfaction survey in which NSTAR “ranked dead last” “in customer satisfaction among 41 US peers.” Given this ranking, I would have expected BECO to be more customer friendly to Olin, but instead I have encountered inadequate responsiveness and even bullying tactics.

Exh. OC-2, pp. 17-18.

CONCLUSION

For the foregoing reasons, WMLP respectfully requests that pursuant to the provisions of G.L. c. 164, §1B(a), the Department determine that Lot 2 is within WMLP’s exclusive service territory, or in the alternative, that the Department determine that Olin College has the right to choose WMLP as its electric service provider.

Respectfully submitted,

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